



IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE, GOKAK

Present: K.M. SHANKAR, B.A.L., LL.B.,
I Addl. Senior Civil Judge, Gokak

Dated, this the 10th day of February, 2023

O.S.No.141/2022

- Plaintiffs:
1. Ramasiddappa Pakkappa Holer @ Lagamapur, Age: 50 years, Occ: Agriculture
R/o: Khanagaon village, Gokak taluk, Belagavi district.
 2. Shivappa Pakkappa Holer @ Lagamapur, Age: 38 years, Occ: Agriculture,
R/o: Khanagaon village, Gokak taluk, Belagavi district.
 3. Mallavva Pakkappa Holer @ Lagamapur, Age: 75 years, Occ: Household,
R/o: Khanagaon village, Gokak taluk, Belagavi district.
 4. Gangavva W/o Yallappa Holer @ Lagamapur Age: 75 years, Occ: Household,
R/o:Khanagaon village, Gokak taluk, Belagavi district.
 5. Santavva D/o. Yallappa Holer @ Lagamapur, Age: 50 years, Occ: Household,
R/o:Khanagaon village, Gokak taluk, Belagavi district.
 6. Anand Yallappa Holer @ Lagamapur, Age: 48 years, Occ: Household,
R/o:Khanagaon village, Gokak taluk, Belagavi district.s
 7. Ramappa Yallappa Holer @ Lagamapur, Age: 45 years, Occ: Household,
R/o:Khanagaon village, Gokak taluk, Belagavi district.



8. Mallavva W/o. Durgappa Mareppagol,
Age: 42 years, Occ: Household,
R/o:Khanagaon village, Gokak taluk,
Belagavi district.

(By Sri.BSK., Advocate)

V/s

- Defendants:
1. Dharmendra S/o. Ramappa Jyai,
Age: 50 years, Occ: Agriculture,
R/o:Khanagaon village, Gokak taluk,
Belagavi district.
 2. Shivanand S/o. Ramappa Jyai,
Age: 45 years, Occ: Agriculture,
R/o:Khanagaon village, Gokak taluk,
Belagavi district.
 3. Fakirappa S/o. Ningappa Bhagoji,
Age: 60 years, Occ: Agriculture,
R/o:Khanagaon village, Gokak taluk,
Belagavi district.

(D1 & 2 By Sri.LSK., Advocate)
(D3 By Sri.SSU., Advocate)

I.A. No.1

Applicants : Darmendra and another
V/s

Opponents : Ramasiddappa and others

ORDERS ON IA-1 FILED U/O 7 RULE 11 R/W SECTION 151 OF CPC

Defendants 1 and 2 have filed the instant application and sought for rejection of plaint on the grounds that the plaintiffs



have filed the suit for the relief of declaration and partition in respect of the suit property against the defendants. The plaintiffs had colluded with each other and on 19.11.2007 filed a suit for declaration and permanent injunction against the defendants on the file of the Prl. Sr. Civil Judge, Gokak and it was dismissed on 01.03.2011. Further, the plaintiffs had preferred an appeal RA.No.110/2011, it came to be dismissed by the Hon'ble Fast Track and District Judge, Gokak on 16.03.2012. Thereafter, they had preferred an appeal before the Hon'ble High Court of Karnataka in RSA.No.5654/2012, it came to be dismissed on 18.02.2016. The plaintiffs suppressing the real fact filed the suit without cause of action and without having locus-standy after lapse of six years. The ancestors of the plaintiffs sold the suit property 80 years ago to the ancestors of the defendants 1 and 2, since then their ancestors, their father and themselves have been in peaceful possession, use and enjoyment of the suit property. Therefore, it is prayed for rejection of the plaint.

2. This application is resisted by the plaintiffs contending that the averments made therein are false. The relief claimed in the suit OS.No.304/2007 is different and the relief claimed in the present suit is different. The defendants have not pleaded in the



application that on what ground the plaint is to be rejected. The cause of action for this suit and cause of action for the earlier suit are not one and the same. Mere parties to the suit are one and the same is not a ground to reject the plaint. There are registered documents in respect of the suit properties, which are not produced by the plaintiffs in the earlier suit due to ignorance of law. Hence, on this ground the plaintiffs cannot be denied of their legitimate title over the suit properties. In order to afford justice to the parties it is just and necessary to adjudicate the matter on the principle of natural justice. It is false to contend that the ancestors of the plaintiffs have sold the entire suit property. The plaintiffs have produced all registered deeds to show that how much area was sold. No proper reasons are assigned to allow the application. If the application is allowed, the plaintiffs will loose the property without any consideration and they will be deprived of property due to mistake of revenue authorities. The entries in the record of rights will not be proof of title of the property. The defendants and their ancestors have not acquired a valid title over the entire area of the suit property. Accordingly, it is prayed for dismissal of the application with cost.



3. I have heard the arguments of the learned counsel appearing for the parties and perused the material on record.

4. The defendants 1 and 2 have relied upon the decisions reported in [2020 (4) Civil LJ 562] (Dahiben Vs. Arvindhbhai Kalyanji Bhanusali (Garja) Dead by through LRs and others), SLP (Civil) No.31844 of 2018 (K. Akbar Ali Vs. K.Umar Khan and others), 2017 (5) KCCR 504 (DB) [Munilakshamma and others Vs. Venkatamma and others], 2021 (5) KCCR SN 116 9P.R. Chenna Reddy Vs. Parvathamma and others), 2019 (4) KCCR 3891 (M/s. Durga Projects and Infrastructure Pvt., Ltd., Bengaluru Vs. S. Rajagopala Reddy and others), 2019 (2) KCCR 1034 (Irshad Baig Vs. Chowramma and others) and Civil Appeal No.439/2022 (M/s. Sree Surya Developers and promoters Vs. Sailesh Prasad and others) with Civil Appeal No.440-441/2022 (M/s. Raja Pushpa properties Pvt., Ltd., Vs. N. Sailesh Prasad and others).

5. Points that arise for consideration of the court are:

1. Whether the IA-1 deserves to be allowed?

2. What order?



6. Findings of this court on the above points are:

Point No.1: in affirmative and

Point No.2: as per the final order for the following:

R E A S O N S

7. Point No.1: it is well settled in catena of rulings of the Hon'ble Supreme Court as well as the Hon'ble High Court of Karnataka that the Court can exercise power U/O 7 Rule 11 of CPC, at any stage of the suit before conclusion of the trial. Plaint cannot be rejected based on the allegations made in the written statement. The court has to read the entire plaint as a whole to find out whether or not the plaint deserves to be rejected under the circumstances enumerated Under Order 7 Rule 11 of CPC.

8. It is contended by the defendants 1 and 2 that there is no cause of action to file the suit against the defendants as the plaintiffs have no right in the suit property and the OS.No.304/2007 filed by them for declaration and permanent injunction against the defendants on the file of the Prl. Sr. Civil Judge, Gokak was dismissed on 01.03.2011, the RA.No.110/2011 preferred by them against the judgment and decree of the said



suit was dismissed by the Hon'ble Fast Track and District Judge, Gokak on 16.03.2012 and the RSA.No.5654/2012 preferred by them on the judgment and decree passed in the said RA was also dismissed on 18.02.2016. But, they suppressed the same and filed the suit without cause of action and without having locustandy. 80 years ago the ancestors of the plaintiffs sold the suit property to the ancestors of the defendants 1 and 2. Since then their ancestors, their father and themselves have been in peaceful possession, use and enjoyment of the suit property.

9. The said events could be gathered from the copies of the judgments of OS, RA and RSA produced by the defendants 1 and 2 and also it can be gathered from the documents produced by the plaintiffs i.e., representation made by the 1st plaintiff to the Deputy Commissioner, Belagavi, letters of Under Secretary to the Government, Deputy Secretary to the Chief Minister, Deputy Commissioner, Belagavi and Tahasildar, Gokak. The above referred judgments and documents go to show that the right of the plaintiffs over the suit property has already been decided by the court of law holding that the plaintiffs are not the owners of the suit property and are not in possession of the same.



10. The averments of the plaint go to show that the suit property originally belonged to Shivappa Mother Sattevva Madar @ Holer and his name was appeared in the record of rights as owner and cultivator. He mortgaged the suit property infavour of Halappa, Chandrappa sons of Siddappa Jayi and executed a mortgage deed on 11.04.1938 and it was got redeemed and possession of the suit property was given to Shivappa. Again he mortgaged 01 acre and 06 guntas of land of Sy.No.139/1 on 05.07.1943 infavour of Sidalingawwa. Thereafter, she purchased the same from Shivappa on 17.07.1944. But, her name ought to have been entered to the said property only but her name was entered to the entire extent of 13 acres and 37 guntas illegally. By taking advantage of such illegal entries she gifted 13 acres and 13 guntas of land infavour of Rudrappa, Ramappa, Shivappa sons of Halappa Jayi on 24.09.1948 illegally. Accordingly, their names were entered in the record of rights vide ME.No.8007. Thereafter, they entered their names vide ME.No.435 alleging partition in 1986, which is illegal and not binding on the plaintiffs. Irappa Shivarayappa Jayi and his two brothers Mahadev and Sidlingappa executed a sale deed in respect of the southern portion of the land infavour of Shankar Shivalingappa Bhagoji on 07.08.1998 and accordingly his name was entered in



the record of rights to the extent of 06 acres and 38 guntas and 08 annas.

11. As per the illegal decree passed in OS.No.55/2014, the names of Dharmendra, Shivanand sons of Ramappa Jayi were entered in the record of rights vide MR.No.H-172/2013-14 in respect of 06 acres and 38 guntas and 08 annas of land of Sy.No.139/1 and name of Fakirappa Ningappa Bhagoji was entered in the record of rights vide MR.No.H-37/2012-13. Therefore, names of the defendants are appearing in the record of rights in respect of the suit properties illegally. The above referred events prima facie corroborated by the documents produced by the plaintiffs. As could be seen from the judgments and decrees of the said OS, RA and RSA, for want of evidence from the side of the plaintiffs and because of their belated claim in the suit property the said suit was dismissed and its judgment and decree was confirmed in the said RSA holding that the plaintiffs are not the owners of the suit property and are not in possession of the same. However, as the documents produced by the plaintiffs in this suit corroborate the averments of the plaint referred hereinabove, the plaintiffs must be provided an opportunity to establish their claim, which would meet the ends



of justice. Accordingly, they have got locustandy to file the suit. Therefore, the contention of the defendants 1 and 2 that the plaintiffs have no such locustandy to file the suit does not sustain under the law and cannot be accepted.

12. Further, the plaintiffs have asserted in their plaint that they have right and title on the 12 acres and 31 guntas of land and they are deemed to be in joint possession of the same along with the defendants. The plaintiffs are in possession of the said land. They were unaware of the sale deed made in respect of the 01 acre and 06 guntas of land. Hence, they filed a suit for declaration and injunction in OS.No.304/2007 in respect of the 13 acres and 37 guntas but it was dismissed in view of the sale deed made in respect of 01 acre and 06 guntas and it's judgment and decree was confirmed by the Hon'ble High Court of Karnataka. The plaintiffs obtained all the records and found the illegal acts of Sidalingavva. Hence, the plaintiffs approached the defendants to cooperate for effecting a partition in 13 acres and 37 guntas of land, wherein in a partition they are entitled to 12 acres and 31 guntas of land and the defendants together entitled for 01 acre and 06 guntas of land. It is pleaded that the cause of action for the suit arose on 05.12.2021 when the



defendants came to the suit property and tried to oust the plaintiffs from possession 12 acres and 31 guntas of land on the basis of the decree and partition. Therefore, it has to be inferred that the claim of the plaintiffs is refused by the defendants. Accordingly, there is a cause of action to file the present suit and the contention raised by the defendants 1 and 2 in this regard does not hold water and cannot be accepted.

13. In view of the above discussion and reasons, with due respect this court has not placed reliance on the decisions relied by the defendants 1 and 2, reported in [2020 (4) Civil LJ 562] (Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Garja) Dead by through LRs and others), SLP (Civil) No.31844 of 2018 (K. Akbar Ali Vs. K.Umar Khan and others), 2017 (5) KCCR 504 (DB) [Munilakshmamma and others Vs. Venkatamma and others], 2021 (5) KCCR SN 116 9P.R. Chenna Reddy Vs. Parvathamma and others), 2019 (4) KCCR 3891 (M/s. Durga Projects and Infrastructure Pvt., Ltd., Bengaluru Vs. S. Rajagopala Reddy and others), 2019 (2) KCCR 1034 (Irshad Baig Vs. Chowramma and others) and judgments of Civil Appeal No.439/2022 (M/s. Sree Surya Developers and promoters Vs. Sailesh Prasad and others) with Civil Appeal No.440-441/2022 (M/s. Raja Pushpa properties



Pvt., Ltd., Vs. N. Sailesh Prasad and others) as the facts and circumstances of these cases differ from the facts and circumstances of the case at hand. Accordingly, the defendants 1 and 2 have not made grounds to allow the present application and it is devoid of merits. Thus, the point No.1 is answered in the negative.

14. Point No.2: in view of the above findings, I proceed to pass the following:

O R D E R

The IA No.1 filed Under Order 7 Rule
11 R/W/S 151 of CPC, is hereby dismissed.

There shall be no order as to cost.

(Dictated to the stenographer on computer, typed by him,
revised, corrected and then pronounced by me in the open
Court on this the 10th day of February, 2023)

(K.M.SHANKAR)
I Addl. Senior Civil Judge, Gokak